

**§ 204.306 Classification as an immediate relative based on a Convention adoption.**

(a) Unless 8 CFR 204.309 requires the denial of a Form I-800A or Form I-800, a child is eligible for classification as an immediate relative, as defined in section 201(b)(2)(A)(i) of the Act, on the basis of a Convention adoption, if the U.S. citizen who seeks to adopt the child establishes that:

(1) The United States citizen is (or, if married, the United States citizen and the United States citizen's spouse are) eligible and suitable to adopt; and

(2) The child is a Convention adoptee.

(b) A U.S. citizen seeking to have USCIS classify an alien child as the U.S. citizen's child under section 101(b)(1)(G) of the Act must complete a two-step process:

(1) First, the U.S. citizen must file a Form I-800A under 8 CFR 204.310;

(2) Then, once USCIS has approved the Form I-800A and a child has been identified as an alien who may qualify as a Convention adoptee, the U.S. citizen must file a Form I-800 under 8 CFR 204.313.

**§ 204.307 Who may file a Form I-800A or Form I-800.**

(a) *Eligibility to file Form I-800A.* Except as provided in paragraph (c) of this section, the following persons may file a Form I-800A:

(1) An unmarried United States citizen who is at least 24 years old and who is habitually resident in the United States, as determined under 8 CFR 204.303(a); or

(2) A married United States citizen, who is habitually resident in the United States, as determined under 8 CFR 204.303(a), and whose spouse will also adopt any child adopted by the citizen based on the approval of a Form I-800A; and

(3) The citizen's spouse must also be either a U.S. citizen, a non-citizen U.S. national, or an alien who, if living in the United States, holds a lawful status under U.S. immigration law. If an alien spouse is present in a lawful status other than the status of an alien lawfully admitted for permanent residence, such status will be a factor evaluated in determining whether the family's situation is sufficiently stable to

support a finding that the applicant is suitable as the adoptive parents of a Convention adoptee.

(b) *Eligibility to file a Form I-800.* Except as provided in paragraph (c) of this section, the following persons may file a Form I-800:

(1) An unmarried United States citizen who is at least 25 years old and who is habitually resident in the United States, as determined under 8 CFR 204.303(a); or

(2) A married United States citizen, who is habitually resident in the United States as determined under 8 CFR 204.303(a), and whose spouse will also adopt the child the citizen seeks to adopt. The spouse must be either a United States citizen or a non-citizen U.S. national or an alien who, if living in the United States, holds a lawful status under U.S. immigration law; and

(3) The person has an approved and unexpired Form I-800A.

(c) *Exceptions.* (1) No applicant may file a Form I-800A, and no petitioner may file a Form I-800, if:

(i) The applicant filed a prior Form I-800A that USCIS denied under 8 CFR 204.309(a); or

(ii) The applicant filed a prior Form I-600A under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(h)(4); or

(iii) The petitioner filed a prior Form I-800 that USCIS denied under 8 CFR 204.309(b)(3); or

(iv) The petitioner filed a prior Form I-600 under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(i).

(2) This bar against filing a subsequent Form I-800A or Form I-800 expires one year after the date on which the decision denying the prior Form I-800A, I-600A, I-800 or I-600 became administratively final. If the applicant (for a Form I-800A or I-600A case) or the petitioner (for a Form I-800 or I-600 case) does not appeal the prior decision, the one-year period ends one year after the date of the original decision denying the prior Form I-800A, I-600A, I-800 or I-600. Any Form I-800A, or Form I-800 filed during this one-year period will be denied. If the applicant (for a Form I-800A or Form I-600A case) or petitioner (for a Form I-800 or I-600 case) appeals the prior decision, the bar to filing a new Form I-800A or I-800 applies while the appeal is pending and